

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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IN RE: FRESENIUS GRANUFLO/))
NAUTRALYTE DIALYSATE PRODUCTS))
LIABILITY LITIGATION) MDL No. 13-02428-DPW
_____))
_____))
THIS DOCUMENT RELATES TO:))
_____))
All Surviving Post-*Lone Pine*))
Actions Which Opted Out Of))
Global Settlement))
_____))

CASE MANAGEMENT ORDER NO. 19
REGARDING POST-*LONE PINE* LEADERSHIP RESPONSIBILITIES OF THE
PLAINTIFFS' EXECUTIVE COMMITTEE
September 11, 2017

After hearing and consideration regarding the Plaintiffs' Executive Committee ("PEC"'s) motion (Document No. 1889), to revise Case Management Order No. 1, I find as follows:

It has been represented to me by the PEC and counsel for Fresenius that the parties' private global settlement will be triggered and funded in the coming months.

Once the parties' global settlement is consummated, the cases remaining for resolution by this Court will be those for which both expert reports and proof of product identification were submitted in compliance with the Court's *Lone Pine* Order (hereafter "compliant *Lone Pine* submissions"). The parties have

informed the Court and a review of the record indicates that only three law firms¹ have remaining opt-out cases in which they have submitted compliant *Lone Pine* submissions:

- a. Hagens Berman Sobol Shapiro;
- b. Sill Law Group; and
- c. Dowdy, Cockerham & Watt.

These three law firms are hereafter referred to as "Opt-Out Litigation Counsel". The cases for which compliant *Lone Pine* submissions were filed by them are hereafter referred to as "Opt-Out Cases."

The Opt-Out Cases cannot reasonably be regarded as cases prosecuted for the "common benefit" of all plaintiffs in a manner consistent with the PEC's role and obligations, given that at least 97% of all cases in this MDL (and the national litigation) are to be dismissed pursuant to the terms of the global settlement between Fresenius and plaintiffs. Thus, the Opt-Out Litigation Counsel are the only counsel with a direct interest in the management and prosecution of the Opt-Out Cases.

Consequently, it appears appropriate for the Opt-Out Litigation Counsel to be charged with full responsibility for the continued management and prosecution of these individual

¹ A fourth lawyer, Oliver Register, Esq., also fell in this category, but the plaintiffs represented by Attorney Register stipulated to dismissal of their action after filing compliant *Lone Pine* submissions.

cases, and for assumption of all costs associated therewith. To that end, the PEC is relieved of its obligations as set forth in Case Management Order No. 1 as concerns the Opt-Out Cases, including but not limited to any obligations further to:

1. Prosecute or manage the Opt-Out Cases;
2. Conduct any discovery in the Opt-Out Cases;
3. Create any new work product specifically for the benefit of the Opt-Out Cases;
4. Incur or pay for any expense related to the prosecution and/or management of the Opt-Out Cases (including the cost associated with electronic storage and management of the PEC's common benefit work product being utilized by Opt-Out Litigation Counsel);
5. Brief or argue issues on behalf of the Opt-Out Cases; or
6. Otherwise act on behalf of or for the common benefit of the Opt-Out Cases.

So long as the Opt-Out Litigation Counsel have agreed to the common benefit assessment as described in CMO 14 (as amended), they continue to be entitled to, and the PEC shall make available to Opt-Out Litigation Counsel, the PEC's common benefit work product. All Opt-Out Cases remain subject to the Court-ordered common benefit assessment of eleven percent pursuant to the terms of the Common Benefit Order as amended (CMO 14, Document No. 1769).

Accordingly, it is hereby ORDERED:

That, while the PEC shall be relieved of responsibilities related specifically to the prosecution of the Opt-Out cases, it shall otherwise remain in place, shall continue to perform its role in effectuating and managing the global settlement and all related responsibilities, and shall continue to be available to this Court for guidance and input as may be requested.

It is so ORDERED.

/s/ Douglas P. Woodlock
DOUGLAS P. WOODLOCK
UNITED STATES DISTRICT JUDGE